

Fulton Financial Corporation

JAMES E. SHREINER
SENIOR EXECUTIVE VICE PRESIDENT

March 30, 2009

Via E-Mail to: regs.comments@federalreserve.gov
and Fax to: (202) 452-3819

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

RE: Regulation E; Docket No. R-1343
Overdraft Fee Assessment

Dear Ms. Johnson:

I am Senior Executive Vice President of Fulton Financial Corporation (“Fulton”), a financial holding company headquartered in Lancaster, Pennsylvania (NASDAQ: FULT). Fulton has ten depository institution subsidiaries, operating approximately 265 branch offices in Delaware, Maryland, New Jersey, Pennsylvania and Virginia through the following affiliates: Fulton Bank, Lancaster, PA; Swineford National Bank, Middleburg, PA; Lafayette Ambassador Bank, Easton, PA; FNB Bank, N.A., Danville, PA; Hagerstown Trust Company, Hagerstown, MD; Delaware National Bank, Georgetown, DE; The Bank, Woodbury, NJ; The Peoples Bank of Elkton, Elkton, MD; Skylands Community Bank, Hackettstown, NJ and The Columbia Bank, Columbia, MD (collectively, the “Banks”). In this letter, Fulton and the Banks will be collectively referred to as Fulton. Fulton appreciates this opportunity to submit its comments to the Board of Governors of the Federal Reserve System (the “Board”) regarding the proposed amendments to Regulation E published in the Federal Register on January 29, 2009 (the “Proposal”).

While Fulton has identified potential areas of concern regarding other aspects of the Proposal, this letter focuses specifically on four elements of the Proposal: (i) limiting consumer customers’ right to opt-out of, or opt-in to a bank’s overdraft services solely to overdrafts arising from automated teller machine (“ATM”) and one-time debit card transactions; (ii) the opt-out versus opt-in alternatives contained in the Proposal; (iii) the implementation of the reasonable opportunity to opt-out of the institution’s overdraft service; and (iv) the systems challenges of distinguishing between one-time debit card transactions and recurring transactions.

Summary of Fulton’s Overdraft Services.

The determination of whether to pay overdrafts is at Fulton’s discretion, unless consumers have requested, and in some cases qualified for, an overdraft protection service. Recognizing that overdrafts can be costly to its customers, Fulton encourages customers to avoid overdraft

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activity. The agreement governing Fulton's consumer deposit accounts advises consumers to avoid overdrafts because they are costly to the consumer and may result in account closure. The agreement also suggests that consumers consider applying for an overdraft protection service, under which Fulton pays overdraft items with funds transferred from another account of the customer, for a nominal fee.

In addition to discouraging overdraft activity, Fulton provides consumers with a fee schedule that includes fees charged to consumers for paid items that create an overdraft, as well as for items returned unpaid. Moreover, promptly following an overdraft event, Fulton sends a written notice advising the consumer: (i) of the overdraft condition of the account; (ii) of the amount of fees that were assessed; (iii) that the consumer may be subject to the daily overdraft fee if the overdraft is not promptly remedied; (iv) that presenting items against non-sufficient funds is costly; and (v) that Fulton offers less costly alternatives. Consumers also are given the option to instruct Fulton not pay items presented against non-sufficient funds. In Fulton's experience, less than 1% of consumers have exercised that option, demonstrating, we believe, that our consumer customers overwhelmingly prefer that we pay overdrafts rather than return items, even when a fee is assessed for doing so.

Thus, Fulton makes a concerted effort to assist consumers in eliminating overdraft activity and in minimizing associated fees. Ultimately, of course, the consumer has the responsibility to manage his or her accounts in a manner that avoids overdraft activity. In the past, consumers have had to rely on periodic written statements in order to manage their accounts. But now they no longer need to rely on, or wait for, their monthly statements or even visit a branch office. Rather, Fulton provides an array of readily accessible tools to help consumers manage their deposit accounts. These tools include access to account balance information and the ability to transfer funds among accounts through our network of more than 200 ATMs, toll-free telephone banking services and online banking services. Each of these tools is available 24 hours a day, seven days a week, and all are made available without charge to the consumer.

Fulton also offers a number of overdraft protection programs, including authorization of automatic transfers of funds from another deposit account, and, for qualified consumers, automatic advances on an open-end extension of credit. In Fulton's experience, a substantial majority of Fulton's consumer customers, through the exercise of prudent account management, utilize their deposit accounts in a way that avoids incurring overdrafts or causing items to be presented against non-sufficient funds.

Opt-Out or Opt-In only Applicable to ATM and One-Time Debit Card Transactions.

Like many financial institutions, Fulton utilizes a largely automated process for most consumer accounts to determine whether to honor items presented against non-sufficient funds and creating an overdraft, or to return items unpaid. This process is used in tandem with Fulton's deposit account processing system, which, in turn, interfaces with numerous third-party systems for operational support and functionality. As currently configured, the deposit account processing

system, with some exceptions, can accommodate a consumer's election to opt-out of the payment of all types of items that would create an overdraft, including checks, automated clearinghouse ("ACH") transactions, preauthorized debits, ATM withdrawals and debit card transactions. Fulton currently gives the consumer the ability to opt-out of overdraft services entirely and notifies its customers of the right to opt-out of overdraft services each time an account becomes overdrawn.

Fulton's deposit account processing system cannot currently support an overdraft services opt-out or opt-in election at the individual account level for only ATM withdrawals or one-time debit card transactions, while continuing to provide overdraft services for other items, such as checks and ACH transactions. Since Fulton, and likely many other financial institutions, relies on third parties to provide certain deposit account processing services, implementing the changes necessary to accommodate an opt-out or opt-in for only ATM withdrawals and one-time debit card transactions is not entirely within Fulton's direct control. Because the changes would need to be implemented across multiple channels, multiple systems would likely require reprogramming, and interfaces between these systems may require alteration. Changes in processing systems and interfaces between systems tend to be both costly and time consuming. Depending on the form of final rulemaking based on the Proposal, creating system functionality that can differentiate from among various types of debit card-initiated transactions could be particularly challenging. While Fulton does not have definitive estimates of the costs it would likely incur, it questions whether any anticipated benefits to the consumer, outweigh the costs of system changes necessary to accommodate the proposed opt-out or opt-in alternatives, especially since Fulton and other financial institutions offer more tools, products and services for real-time consumer account management than have been available at any other time in history. Fulton notes the results of the Macro International, Inc. review and consumer testing referenced in the Proposal (the "Macro Study"), which found that a majority of test participants would not opt-out of overdraft services, if the opt-out also applied to checks, and about one-half of test participants would still not opt-out, even if the opt-out was limited to ATM withdrawals and one-time debit card purchases.

Opting-out or opting-in with respect to only certain types of transactions also creates potential for consumer confusion and misunderstanding. Consumer customers of Fulton continue to expand their use of debit cards, which also typically serve as their access card for ATM transactions. Debit cards are used for point of sale ("POS") transactions where a personal identification number ("PIN") is required, where a signature is required, and where neither a signature or PIN is required, such as when the debit card is used for an online or telephone transaction. Many customers use their debit cards to establish recurring payments for important obligations such as insurance, telephone, utility and other payments that they would prefer to be paid and not returned. Fulton is concerned that consumer customers may be confused by or misunderstand not only the distinction between checks and ACH transactions, which, under the Proposal, would not be subject to the opt-out or opt-in, and ATM and debit card transactions, which would be subject to the opt-out or opt-in, but also the Proposal's distinction between one-time debit card transactions and recurring transactions affected through their debit cards.

Fulton encourages the Board adopt the modified version of proposed Section 205.17(b)(2) that would expressly permit institutions to condition the consumer's ability to opt-out of an institution's overdraft services for ATM withdrawals and one-time debit card transactions on the consumer also opting-out of the institution's overdraft services for checks and other transaction types. Such an approach would be less costly for financial institutions and be less likely to result in customer confusion regarding the transactions for which their financial institution may provide overdraft services.

Opt-Out Versus Opt-In for Overdraft Services.

Based on Fulton's experience over the past 16 months, during which Fulton provided customers incurring overdraft fees with the option to elect to opt-out of all overdraft services, very few customers (less than 1%) make such an election. Under an opt-in approach, we suspect that many consumers will conclude from the Model Forms included with the Proposal that overdraft services involve fees, and will be reluctant to opt-in simply because overdraft services involve additional cost. In addition, at the time of account opening, consumers may tend to believe that they will be unlikely to incur overdrafts in the future. We suspect that many customers choosing not to opt-in to overdraft services, after transactions they attempt to initiate are rejected, will contact Fulton regarding the rejections. Once these customers understand the implications of non-participation in overdraft services, we expect that significant numbers of customers will reconsider their decision not to opt-in to overdraft services. This will result in relatively greater administrative burdens on Fulton in processing these opt-in requests on a case-by-case basis, as compared to processing, what, in Fulton's experience, are a very small number of case-by-case processing requests under its current opt-out procedures.

Fulton is cognizant of consumer sensitivity to, and, in some cases, dissatisfaction with, fees assessed for overdraft services. Fulton also understands its customers' desire to have transactions they have initiated be honored by Fulton. On balance, Fulton believes its consumer customers' interests will be best served through an opt-out approach, which favors payment of customer initiated transactions. Fulton, therefore, encourages the Board to adopt an opt-out approach consistent with Alternative 1 in the Proposal.

Implementation of the "Reasonable Opportunity to Opt-Out."

The Proposal requires that, following notice that the institution may pay overdrafts arising from ATM withdrawals and one-time debit card transactions, consumers be given a reasonable opportunity to opt-out of the institution's overdraft services, before an institution may assess an overdraft fee. The proposed Official Staff Interpretations provide four examples of what would constitute a reasonable opportunity to opt-out. The first three examples, applicable to customer responses by mail, telephone and electronic means, provide for a 30-day period during which the institution must await a response before being permitted to assess overdraft fees. The fourth example, applicable to customer responses required prior to account opening, permits assessment

of overdraft fees upon account opening, if the customer has not opted-out of the overdraft services during the account opening process.

In Fulton's deposit processing environment, there is currently no automated capability to defer assessment of overdraft fees during the period during which the customer might consider exercising the opt-out by mail, telephone or electronic means. Thus, Fulton would be faced with either the expense of developing systems capability to monitor and defer overdraft fees during the period the customer considers the opt-out, or require all customers to make an immediate election at the time of account opening.

In order to provide consumers with alternative means to communicate their desire to opt-out (Fulton notes the findings in the Macro Study that about two-thirds of test consumers preferred to communicate by telephone), and avoid costly system changes, Fulton recommends that the Board consider eliminating the period, following delivery of the notice that the institution may pay overdrafts arising from ATM withdrawals and one-time debit card transactions, during which a financial institution is prohibiting from assessing overdraft fees. Although the Board invited comment concerning whether a shorter period might be appropriate, such a shorter period would not eliminate the need to implement systems changes, and Fulton believes that as the period is shortened, the likelihood of an overdraft occurring so quickly following account opening would become increasingly remote.

Challenges Distinguishing One-Time Debit Card Transactions from Recurring Transactions.

With respect to debit card transactions, the Proposal is concerned with "one-time debit card transactions." While one-time debit card transactions are not defined in the Proposal, the Board does appear to make some distinction between one-time debit card transactions and preauthorized debit card transactions and recurring transactions. Under Fulton's current debit card processing environment, Fulton is unable to make any distinction between signature-based debit card transactions which are one-time, POS-type transactions, and those which are preauthorized or recurring in nature. With respect to PIN-based transactions, although there is not currently a means to distinguish one-time, POS-type transactions from those which are preauthorized or recurring in nature, Fulton believes that with changes in systems (with attendant development costs), it may be possible to make such a distinction.

Fulton expects consumers may find the Proposal's distinction between one-time transactions and recurring or preauthorized transactions initiated with a debit card confusing. Consumers may be uncertain whether transactions that they initiate with a debit card would be honored under Fulton's overdraft services, incurring an overdraft fee, or rejected because the consumer chose to opt-out of overdraft services for certain debit card-initiated transactions.


In the Proposal, the Board invited comment concerning whether a consumer's opt-out should also apply to recurring debit card transactions. Because of processing system challenges, and to

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provide uniform, understandable and predictable results for customer's initiating transactions through the use of a debit card, Fulton recommends that the Board revise the Proposal to provide that the opt-out apply to ATM withdrawals and all transactions initiated with a debit card, whether one-time, preauthorized or recurring.

We extend our thanks the Board for its consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'James E. Shreiner', with a stylized, flowing script.

James E. Shreiner
Senior Executive Vice President
Fulton Financial Corporation